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UKRAINE – REFORMING LOCAL GOVERNMENT TO COMPLY WITH EU MEMBER STATES

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SUMMARY

The paper deals with the conceptual fundamentals of municipal autonomy outlined by the Constitution of Ukraine and the European Charter of Local Self-Government. Starting with general tendencies in reforming the system of local self-government in EU member states, the article defines the main tasks to reform local-self-government, the issue of EU regional policy, the components of general European regional policy and the focus of European administration. The author of the paper concludes that European experience regarding the introduction of the decentralized model of administration should allow Ukraine's regions to receive the desired freedom of actions in implementing the regional strategies of development.

Key words: local self-government, decentralization, communities, development, power, reforms.

РЕФОРМИРОВАНИЕ СИСТЕМЫ МЕСТНОГО САМОУПРАВЛЕНИЯ В УКРАИНЕ И СТРАНАХ ЕВРОПЕЙСКОГО СОЮЗА

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АННОТАЦИЯ

В статье рассматриваются концептуальные основы муниципальной автономии, изложенные в Конституции Украины и Европейской Хартии местного самоуправления. Исходя из общих тенденций реформирования системы местного самоуправления в государствах-членах ЕС, в статье определяются основные задачи по реформированию местного самоуправления, вопрос региональной политики ЕС, а также компоненты общеевропейской региональной политики с акцентом на европейскую администрацию. Автор статьи делает вывод, что европейский опыт внедрения децентрализованной модели управления должен позволить регионам Украины получить желаемую свободу действий при реализации региональных стратегий развития.

Ключевые слова: местное самоуправление, децентрализация, общины, развитие, власть, реформы.

Introduction. The relations between the levels of governance in any member state of the European Union (hereinafter EU) are based on the issue of distributing the authorities, responsibilities and guarantees of their activity. At present the main principles of forming the competence of each level of governance is achieving the highest level of efficiency of public administrative bodies in the fulfilment of their specific functions at their respective levels. However, the optimal ratio of state and local self-government is created differently in different countries. Here the most important factors, determining this phenomenon, are historical, national, and geographically specific in the development of this ethnic group, in the establishment of their own country.

However, the general rule for any member state of the EU is the fact that the structure of administrative and territorial division of any state within the Euro-

pean space envisages local democracy as an integral part of the state structure.

The aim of this paper. To examine the main directions to reform the system of local self-government in Ukraine and the member states of the EU as the most important prerequisite to their further democratization and improvement of their system of government.

The conceptual consideration of the specifics in the historical development of local self-government in the EU founding members was given by European experts of municipal-management and law, reflected and stipulated in the documents used as a basis for the development of local democracy in EU in general and its member states in particular. Thus, European achievements in this area of scientific analysis of the life of territorial communities of citizens should be studied by domestic scientists for the purpose of further development of local self-government

in compliance with specific standards, inherent in the EU.

Core material presentation. The reform of local self-government in Ukraine has a long history, which started with several attempts during the independence period alone (1991–2016). The development of local self-government in Ukraine can be divided into the stages of establishment, evolution and modernization.

From a historical point of view:

A. 1991–1996

This period is marked by the formation of a constitutional model of local self-government in independent Ukraine, the transformation of the Soviet system of “councils of all the levels” into the post-Soviet community-based model of local self-government.

B. 1996–2004

The next step was represented by enshrining the foundations of local self-government in the Constitution



and the laws of Ukraine, for instance, in the Law of Ukraine “On Local Self-Government in Ukraine” and the development of the community-based model of local self-government in Ukraine.

C. 2004–2014

The beginning of the 2000s is marked by the efforts of reforming local self-government via adopting the draft law on the introduction of changes to the Constitution of Ukraine regarding the improvement of the local self-government system (registration number 3207-1) and other non-implemented initiatives;

D. 2014–2016

The recent times have been symbolized by launching the reform of local self-government and territorial organization of power based on decentralization after the Revolution of Dignity (Ukrainian Revolution of 2013–2014).

Prior to adopting the Constitution of Ukraine in 1996, local self-government in Ukraine was regulated by the Constitution of the Ukrainian Soviet Socialist Republic with changes and amendments, and the Constitutional Agreement or the Agreement “On the fundamental principles of the organization and functioning of state power and local self-government in Ukraine for the period until the adoption of the new Constitution of Ukraine” dated June 8th, 1995¹.

For instance, Article 4 of the Constitutional Agreement stated that “local self-government in Ukraine shall be implemented directly by the territorial self-organization of citizens and via the bodies of local self-government” [1]. The essence of local self-government was revealed in Chapter VIII – “Local bodies of state executive power and local self-government in Ukraine” – of the Constitutional Agreement. However, the Constitutional Agreement did not reform the transformed Soviet model of local government and self-government, it was preserved instead.

The current system of domestic local self-government was established with the adoption of the Constitution of Ukraine on June 28, 1996. For instance, Article 7 of the Main Law defined that “local self-government shall be recognized and guaranteed” in Ukraine and Chapter XI “Local self-government”

standardized the constitutional fundamentals of the organization and functioning of local self-government in Ukraine. This constitutional model of local self-government was rather eclectic – it integrated the community-based model and post-communist practices of local self-government. In addition, some contentious provisions regarding the ratio of the local self-government system and the system of administrative-territorial structure of Ukraine were introduced into the Basic Law.

The provisions of the Constitution regarding local self-government in Ukraine were developed in the current legislation of Ukraine, in particular, in the laws of Ukraine “On Local Self-Government in Ukraine” (1997), “On Serving in Local Self-Government Bodies in Ukraine” (2001), “On Status of Local Council Deputies” (2002), etc. In 1997 Ukraine also ratified the European Charter of Local Self-Government; but the constitutional collisions in the sphere of local self-government have not been solved.

The above mentioned, demonstrate the need to reform local self-government. The efforts of implementing systemic reforms in the sphere of local self-government were made during the administrative reform of 1998–1999. However, the relevant reforms in the relation to dividing the authorities between the bodies of state administration and local self-government have not yet been completed. The first normative document, stipulating the reform of local self-government, was the concept of state regional policy, approved by the Order of the President of Ukraine No. 341/2001 dated May 25th, 2001.

In 2003, shortly before the Orange Revolution, a parliamentary law was drafted on introducing the changes to the Constitution of Ukraine regarding the improvement of systemic local self-government (registration number 3207-1; dated July 1st, 2003), which was adopted as a basis on December 12th, 2003 and submitted to the Constitutional Court of Ukraine. This draft envisaged the strengthening local self-government and improving its structure, as well as standardizing the mechanism in the formation and the abolishment of adminis-

trative-territorial units, the introduction and changes to the borders of districts and cities, the escalation of residential units to the category of cities, naming and renaming residential units and districts.

It is known that on December 8th, 2004 the *Verkhovna Rada* of Ukraine (the Ukrainian Parliament) adopted the Law of Ukraine “On Introducing Changes to the Constitution of Ukraine” and included the draft law No. 3207-1 on the agenda, and on December 23rd, 2004 it was accepted as a basis and submitted for consideration to the Constitutional Court of Ukraine. However, the reform of local self-government, envisaged by the draft-law No. 3207-1, has *not yet* been implemented.

There have been some efforts made later to initiate the reform of local self-government. For instance, the Resolution of the Cabinet of Ministers of Ukraine – dated July 29th, 2009 N° 900-p – approved the concept of reforming local self-government; it was prepared in accordance with European standards, but was abolished in 2012 [3, p. 10]. At this time, an elaboration of the conceptual fundamentals of reform was conducted by the Constitutional Assembly, but the relevant groundwork has not been implemented in constitutional-legislation or law-enforcement practices.

Among some noteworthy positive steps toward strengthening local self-government at that time was to legalize the associations of local self-government bodies. Its status was legalized in the Law of Ukraine “On Associations of Local Self-Government Bodies” – dated April 16th, 2009 [4]. It promoted the potential of the All-Ukrainian-Associations of local self-government, the Association of Ukrainian Cities, and other associations.

Solving the problems of local self-government became urgent after the Revolution of Dignity (Ukrainian Revolution of 2013–2014). After the Ukrainian Government approved the “concept of reforming local self-government and the territorial organization of power in Ukraine” – April 1, 2014, the reform of local self-government was initiated on the basis of decentralization and subsidiarity. This reform aims to transform the community-based theory into the actual practice of local government as well as solving a number of issues, inherent to local self-government from

¹ The Constitutional Agreement became the alternative for constructive regulation of the dispute between the Parliament and the head of the state after the failures of draft Constitutions of Ukraine and the draft law “On State Power and Local Government in Ukraine”.



the moment of declaring the independence of Ukraine.

On June 17, 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Cooperation of Territorial Communities” to implement “The Concept of reforming local self-government and territorial organization of power in Ukraine”. This law defined the organizational and legal fundamentals of cooperation between territorial communities, the principles, forms and mechanisms of cooperation, stimulation, financing and controlling [5]. In essence, the Law of Ukraine “On Cooperation of Territorial Communities” legalized the instruments of cooperation between territorial communities and promoted their further integration.

The reform of local self-government and the territorial-organization of public authority in Ukraine, in terms of decentralization, became a priority for the Constitutional Commission; organized in 2015 by the President of Ukraine and headed by Volodymyr Groysman. The Commission soon prepared a draft-law on introducing changes to the Constitution in terms of decentralization in Ukraine. In July 2015 this draft-law was submitted by the President for parliamentary consideration [6].

The draft-law “On introducing changes to the Constitution of Ukraine – regarding decentralization” (registration number 2217a) envisaged that the division of authorities to the system of local self-government-bodies and their executive-bodies of various levels should be made according to the subsidiarity principle, which concurs with the European Charter of Local Self-Government.

For instance, according to Article 4 of the European Charter of Local Self-Government, local self-government-bodies have every right to be free in solving any issue, which is not excluded from the scope of their authorities and is not submitted for the solution by any other body, within the legal framework and in accordance with the provisions of the draft-law N° 2217a. Essentially, public authorities are exercised by public-administrative-bodies which have the closest contact with citizens. While vesting authorities to any establishment, it is necessary to consider the volume and character of the challenges as well as the requirements to achieving efficiency and economy.

Considering the above mentioned, draft-law No. 2217a envisaged removing the provisions on local state administrations from the Constitution of Ukraine and abolishing the institute of heads of local state administrations. Instead, the main authorities are concentrated at the basic level – in the territorial community.

However, decentralization does not mean “weakening central power” on such issues as defense, foreign policy, national security, rule of law, respect for human rights and civil-liberties. Therefore, local self-government-bodies proposed to introduce an Institute of Prefects to monitor its compliance with the Constitution and laws of Ukraine. The project states that a Prefect should be appointed and dismissed by the President of Ukraine as a recommendation from the Cabinet of Ministers.

On August 31, 2015 the draft-law “On Introducing Changes to the Constitution of Ukraine – regarding decentralization” (registration number 2217a) was approved by the Verkhovna Rada of Ukraine on its first reading. But unfortunately till now it did not enter into force.

Local self-government has inherent duality and has a double purpose in the society. On one hand, it is the institute of power, the closest to citizens, on the other – it is a form of self-organization by citizens, which refers local-self-government to the institutes of civil society. In this sense, self-governed-bodies become organizers of the relevant management-system, resolving challenges of significance via civil structures, instead of being the executors of state-orders/decree to provide the relevant services.

The functioning of the institute of local-self-government in the system of public power of European countries is supported by a number of internationally recognized normative and legal acts, in which prominence is given to the European Charter of Local-Self-Government and such documents as the European Outline Convention on Cross Border Cooperation between Territorial Communities or Authorities, the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages, the European Convention on the Participation of Foreigners in Public Life at Local Level, the European Charter for Cities and Towns, etc.

In the early 1990s all Central European countries experienced the legal institutionalization of self-government in the form of constitutionally executing and adopting basic legislation as a minimal prerequisite for the mode of local democracy.

Reforming local self-government in European countries is conducted with different intensity/disperate degrees of intensity, in different directions and in different sequences. In the context of European integration, the countries of Central and Eastern Europe had considerable structural-functionality and municipal reforms, significant in their content and results in the second half of the 20th century. The former reforms were related to functional changes, aimed at re-distributing the functions between central, regional and local-government-bodies and included the expansion of authorities to regional and local government. The latter envisaged organizational changes in the relations between different levels of local-self-government and were related to reforming the system of the administrative-territorial-structure of countries and the introduction of self-government at regional level [8].

The changes in the administrative systems of various countries can be conventionally divided as follows: correcting/amending the number of administrative units, organizational reforms, financial reforms, functional and procedural reforms [2].

During the first wave of reforms in those European countries, there was a decrease in the number of administrative units, in particular, regarding the number of municipalities.

There was a frequent/recurring assumption that the efficient and successful provision of services at the local level requires more electorate precincts/constituencies and administrative sub-units [3, c. 43].

The interim level of governance was strengthened to resolve the challenges related to increased-urbanization and the necessity to provide new types of services. It allowed for taking decisions and exercising this activity beyond the municipal-territory – the locality; it was an efficient instrument of spatial territorial planning.

Another type of reform, which took place in those European countries, was *organizational* reform. These were



mainly introduced having a considerable impact on the Central Power, they envisaged changing the internal structure of territorial units and had the following impacts; strengthening the role of heads – mayors – and elected-councils; making the decision-taking process more open, public and democratic; extending the participation of the community in the decision-making process; introducing mandatory “rational” methods of planning; changing the structure of local personnel and local rules in organizing the activity of the authorities. In many ways, these activities were aimed at promoting a more active participation by local-self-governments in the political systems of the relevant countries and transforming them into reliable executors of state policy [3, c. 45].

Ostensibly, the *financial* reforms envisaged increasing the volume of resources provided by the Central Power to the local-government-bodies, in particular, for settlements according to the social programs, which were initiated by the Centre. It triggered the efforts to strengthen the ability of local-self-governments to collect taxes or provide alternative sources to finance themselves; most notably being payments for services, creating local enterprises or providing administrative services on market-based principles. Almost all the decentralization reforms, which have been implemented recently in the European countries, have been accompanied with an increase in the resources for local-self-governments.

The *functional* and *procedural* reforms included a complex of activities, aimed at decentralization of the authorities of the state power bodies and their transfer to local self-government bodies.

For example, in the UK, the provision of social services has been decentralized to bring them closer to people. In Italy, a similar decentralization of many state functions took place. In some countries (France, Italy, Spain) – the control functions of the prefects over the activities of local self-government bodies were weakened and even cancelled. In addition, system planning and service delivery systems were implemented (Germany, France, Denmark).

In most European countries, the most important tasks of decentralization reforms can be defined as providing better services to citizens, improving the performance of public authorities and local self-gov-

ernment bodies, bringing services closer to their consumers (introducing the principle of subsidiarity), achieving transparency in public administration, more active involvement of citizens in decision-making, consolidation of fiscal policy, etc.

Conclusion. Ukraine has a fundamental law; Ukraine has a state strategy for regional development that is very close in structure to similar/corresponding documents of EU member states. Since 2015 the state regional policy in Ukraine has practically acquired European features and has obtained competitive official financing from the Ukrainian budget. The Oblasts of Ukraine (Regions) have acquired the possibilities to actually plan and finance their own development.

All Ukrainian Oblasts now have their elaborated strategies of development until 2020 or 2025. Unfortunately, realities of life demonstrate that not all officials in the regions can use the new instruments of regional development efficiently because of lack of experience and skills, as well as of political will [7].

Expansive decentralization is taking place in Ukraine along with reform of state regional policy, which has completed its first stage – the formation of the normative foundation. Due to budgetary decentralization, the cities of Oblast-significance and united territorial communities have received considerable additional resources for their development.

Decentralization gives the possibility for local communities and regions to assert more impact on their development and the welfare of the community. The regions and communities develop their own internal capabilities; improve internal conditions, which impact on investments, and by supporting them, they become successful.

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